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DISTRICT II

February 1, 2023

To:

Hon. Sandra Jo Giernoth
Circuit Court Judge
Electronic Notice

Sarah Adjemian
Clerk of Circuit Court
Washington County Courthouse
Electronic Notice

Jack Wallace Rettler
Electronic Notice

Christine M. Doubleday
3324 Lake Drive
Hartford, WI 53027

James J. Doubleday
Electronic Notice

You are hereby notified that the Court has entered the following opinion and order:

2022AP457

James J. Doubleday v. Town of Hartford (L.C. #2021CV545)

Before Gundrum, P.J., Grogan and Lazar, JJ.

Summary disposition orders may not be cited in any court of this state as precedent or authority, except for the limited purposes specified in WIS. STAT. RULE 809.23(3).

James J. and Christine M. Doubleday appeal from the circuit court's order denying their petition for certiorari relief and affirming the decision of the Town of Hartford Town Board (Town Board) issuing a conditional use permit (CUP). Based upon our review of the briefs and record, we conclude at conference that this case is appropriate for summary disposition. *See* WIS. STAT. RULE 809.21 (2019-20).¹ For the following reasons we reverse and the cause is remanded with directions.

¹ All references to the Wisconsin Statutes are to the 2019-20 version unless otherwise noted.

This is a certiorari review of the Town Board’s decision to issue a CUP to Larry Goeman so he could operate a bar/restaurant on his property. In a certiorari action, we review the record and decision of the Town Board, not that of the circuit court, *see Oneida Seven Generations Corp. v. City of Green Bay*, 2015 WI 50, ¶42, 362 Wis. 2d 290, 865 N.W.2d 162, and we “accord a presumption of ‘correctness and validity’” to that decision, *see Lamar Cent. Outdoor, Inc. v. Board of Zoning Appeals of Milwaukee*, 2005 WI 117, ¶16, 284 Wis. 2d 1, 700 N.W.2d 87. Our review is limited to “(1) whether the [Town Board] kept within its jurisdiction; (2) whether it proceeded on a correct theory of law; (3) whether its action was arbitrary, oppressive, or unreasonable and represented its will and not its judgment; and (4) whether the evidence was such that it might reasonably make the order or determination in question.” *See Oneida Seven Generations*, 362 Wis. 2d 290, ¶41 (citation omitted).

In *Lamar*, 284 Wis. 2d 1, ¶26, our supreme court expressed that “[f]or certiorari review to be meaningful ... a board must give the reviewing court something to review.” It is insufficient for a board to state in conclusory fashion that an application was approved or denied because it did or did not meet certain statutory criteria. A board is expected “to express, on the record, its *reasoning why* an application *does or does not* meet the statutory criteria.” *Id.*, ¶32 (emphasis added). The court added that “[w]ithout such statement of reasoning, it is impossible for the circuit court to meaningfully review a board’s decision, and the value of certiorari review becomes worthless.” *Id.*, ¶32. The court stated that a *written decision* showing the board’s reasoning is not required “*as long as* [the] reasoning is clear from *the transcript* of its proceedings.” *Id.*, ¶31 (emphasis added).

Our supreme court has more recently expounded on what the certiorari record should include:

Under our cases, no requirement exists that a written decision be prepared, but, for meaningful review, a reviewing court must be able to *discern from the record or the transcript* of the proceedings before the board the reasons for the denial [or approval] of the application for a conditional use permit.

AllEnergy Corp. v. Trempealeau Cnty. Env't & Land Use Comm., 2017 WI 52, ¶23 n.14, 375 Wis. 2d 329, 895 N.W.2d 368 (emphasis added) (citing *Lamar*, 284 Wis. 2d 1, ¶¶31-35). Thus, under the current state of the law, while neither a written decision nor even a transcript of the relevant proceedings actually is required, the record must at least demonstrate the reasons for a board's decision regarding the application and "why an application does or does not meet" the relevant criteria. *Lamar*, 284 Wis. 2d 1, ¶32. In *Oneida Seven Generations*, for example, our supreme court expressed that the record "should have included transcripts of the proceedings at issue," but since those were not provided, the court relied heavily upon its own review of audio recordings of board hearings in the record, which recordings were "more informative of ... actual statements than are the meeting minutes, which provide only a summary." *Oneida Seven Generations*, 362 Wis. 2d 290, ¶53 n.12.

The current record is insufficient for meaningful review of the Town Board's decision. The parties would have this court issue its ruling based solely upon the current record, with the Town insisting that the record is sufficient to support its action approving the CUP and with the Doubledays contrarily asserting that the Town should be bound by the current record and that it is insufficient to support the Town Board's approval of the CUP because it does not show the Town Board's reasoning for its approval.

In support of its position, the Town directs us to minutes from various public hearings. Those minutes, however, are insufficient to demonstrate the reasoning as to why the Town Board

approved the CUP. The minutes from the October 4, 2021 hearing, at which the Town Board approved the CUP, merely state:

The [T]own feels like they have accommodated Mr. Doubleday as much as possible. He is taking his issues out on the [T]own just because he does not like the establishment. All the issues he has presented have been addressed. Mr. [Larry] Goeman has also tried hard to accommodate Mr. Doubleday. He is willing to work with him as well.

The next entries in the minutes are notations that Supervisor Scott Lofy “made a motion to approve” the CUP, Supervisor Ralph Horst “seconded the motion,” and that the “[m]otion carried” with “[a]ll in favor.”

In responding to the Doubledays’ allegation that Supervisor Lofy, who moved for approval of the CUP and voted in favor of it at the October 4, 2021 meeting, was not impartial but was biased in favor of the CUP, the Town directs us to the September 22, 2021 plan commission meeting and statements in the minutes suggesting, as the Town writes it, that at that meeting “Lofy expressed concerns with the parking associated with the Property.” The minutes themselves indicate that Lofy “stated that he has some concerns with the parking in front of the building. He is wondering if we could possibly make it parallel parking only.” While this may or may not aid the Town in asserting Lofy was not biased in favor of the CUP, these summarized comments certainly provide no insight into why he moved and voted in favor of it.

The CUP itself, signed by the Town Board chairperson and Larry Goeman on October 4, 2021, states in conclusory fashion that “[a]fter public hearings ... held on August 4th, 2021, and September 22, 2021, [at] which it appeared the proposed use would not be hazardous, harmful, offensive, or adverse to the environment o[r] the value of the neighborhood, [t]he Town Board authorized the Zoning Administrator to issue” the CUP.

The parties have directed us to nothing else in the record that shows the reasoning of the Town Board in approving the CUP. As indicated, our supreme court stated in *Lamar* that it is insufficient for a board to state in conclusory fashion that an application was approved or denied because it did or did not meet certain statutory criteria. *Lamar*, 284 Wis. 2d 1, ¶27. A board must also provide the reasons why it decided that the facts did or did not meet the criteria. *See id.* Here, the record provided by the Town did not sufficiently show the reasons why the Town Board approved the CUP.

Fortunately for the Town, however, this does not end the matter, as the record and briefing indicate that while there may not be transcripts of the relevant meetings showing the reasoning of the Town Board in approving the CUP, there do appear to be audio recordings that may shed adequate light on the Town Board's reasoning for its approval. For this reason, we remand to the circuit court for further proceedings; specifically to direct the Town to supplement the certiorari record with either transcripts from the relevant meetings or the actual recordings themselves. Upon receiving the same, the circuit court should review the transcript(s) and/or recordings, along with other relevant portions of the record, to make a determination as to whether the four certiorari considerations discussed above are satisfied.

Therefore,

IT IS ORDERED that the order of the circuit court is summarily reversed and cause remanded with directions. *See* WIS. STAT. RULE 809.21.

IT IS FURTHER ORDERED that this summary disposition order will not be published.

Sheila T. Reiff
Clerk of Court of Appeals